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Federal Communications Commission

DA 97-1419

DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-18
Table of Allotments,)	RM-8943
FM Broadcast Stations.)	RM-9053
(Durango and Dolores, Colorado) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 3, 1997

Released: July 11, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 689 (1997), issued in response to a petition for rule making filed on behalf of Range Broadcasting Company ("Range") proposing the allotment of Channel 243A to Durango, Colorado, as that community's fourth local FM transmission service. Petitioner filed supporting comments in response to the *Notice*. A counterproposal was filed on behalf of Four Corners Broadcasting, LLC ("Four Corners").² Comments were also filed on behalf of GulfStar Communications New Mexico Licensee, Inc. ("GulfStar").³ No other comments were received.

2. In its counterproposal Four Corners has requested the allotment of Channel 243C2 to Dolores, Colorado, as that community's first local aural transmission service, and states its intention to apply for the channel, if allotted.⁴ In support of its proposal, Four Corners advises that Dolores, an incorporated community of 866 persons,⁵ located in Montezuma County (population 18,672), is presently devoid of local aural transmission service. Further,

¹The community of Dolores, Colorado, has been added to the caption.

²Public Notice of the counterproposal was given March 25, 1997 (Report No. 2182).

³GulfStar advises that it recently became the licensee of Station KDAG(FM), Farmington, New Mexico, pursuant to the consummation of an assignment of license to GulfStar from J. Thomas Development of New Mexico, Inc. (File No. BALH-961212EC).

⁴The distance between Durango and Dolores is 59.4 kilometers (37 miles) whereas a distance of 166 kilometers (103 miles) is required between Class A and C2 co-channel allotments.

⁵Population figures reported herein are taken from the 1990 U.S. Census.

Four Corners states that while Dolores receives two full-time reception services,⁶ and is within the 0.5 mV/m daytime contour of several AM stations, no AM station provides interference free service to the community during nighttime hours. Further, Four Corners reports that the allotment of Channel 243C2 to Dolores would offer an opportunity to provide a vital fulltime service to approximately 9,000 residents residing in rural areas in Montezuma County. Four Corners claims that Dolores is more deserving of the allotment of Channel 243C2 as its would provide a first local transmission service to Dolores and afford the opportunity for FM service to be provided to underserved areas in Dolores and portions of Montezuma County. In contrast, Four Corners asserts that as Durango presently has five full-time local commercial aural transmission services,⁷ the allotment of Channel 243A to that community should not be preferred over Dolores, since it would fulfill a lower allotment priority. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).⁸

3. GulfStar advises that concurrent with its comments herein, it has filed an application to upgrade Station KDAG(FM) to operate on Channel 245C at Farmington. GulfStar states that although the site restriction placed on proposed Channel 243A at Durango in the *Notice* affords protection to the present operation of Station KDAG(FM) on Channel 245C1, it is not sufficient to protect its application request to operate with Class C facilities, and therefore would preclude Station KDAG(FM) from serving its optimum potential audience.^{9,10} However, in an effort to accommodate Range Broadcasting's desire to provide an additional FM service to Durango, GulfStar offers that Channel 287A can be allotted to that community in lieu of proposed Channel 243A. GulfStar urges that adoption of its alternate proposal would still enable the residents of Durango to receive a new local FM service and would not hinder GulfStar's ability to operate Station KDAG(FM) at Farmington with maximum power.

4. As an initial matter, we note that GulfStar's application to operate on Channel 245C at Farmington, New Mexico, is mutually-exclusive not only with the proposal to allot

⁶Four Corners reports that Stations KRTZ(FM) and KISZ-FM, both licensed to Cortez, Colorado, provide primary service to the Dolores area.

⁷I.e., Stations KDGO(AM), KWXA(FM), KIQX(FM), KIUP(AM) and KRSJ(FM). Four Corners also reports that noncommercial Station KDUR(FM) is licensed to and operating at Durango.

⁸The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

⁹GulfStar's application reveals that the predicted 60 dBu contour of its proposed operation on Channel 245C at Farmington, New Mexico, encompasses 16,343.4 square kilometers in which 122,012 persons reside.

¹⁰The distance between GulfStar's specified site at Farmington at coordinates 36-48-52 and 107-53-32, and Durango is 52 kilometers (32 miles) whereas a distance of 95 kilometers (59 miles) is required between Class A and C second adjacent channels.

Channel 243A to Durango, but also with Four Corner's proposal to allot Channel 243C2 to Dolores, Colorado.¹¹ It is the Commission's policy to attempt to eliminate conflicts between a rulemaking petition and a later filed application where possible to do so without prejudicing the affected parties. See, *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments (Conflicts)*, 8 FCC Rcd 4743, 4745 N.12 (1993). See also, *Kerman, California*, 11 FCC Rcd 2887 (1996). Therefore, we will adopt GulfStar's proposed alternative allotment of Channel 287A to Durango to accommodate Range's desire to provide an additional local FM service to that community. With regard to Four Corner's desire to provide a first local aural transmission service to Dolores, Colorado, the staff has determined that Channel 227C2 can be allotted to that community in lieu of Channel 243C2. Therefore, having concluded that each of the communities under consideration herein can be accommodated, the need for a comparative consideration has been eliminated.

5. In consideration of the above, we believe the public interest would benefit by adopting each of the proposals as it will provide an additional local FM service to Durango, and a first local aural transmission service to Dolores, while simultaneously enabling the application process to proceed for Station KDAG(FM), Farmington, New Mexico, which seeks to provide an expanded service to the residents of that community.

6. Channel 287A can be allotted to Durango, Colorado, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is sited at least 1.5 kilometers (0.9 mile) south of the community at coordinates 37-15-44 and 107-52-27.¹² Channel 227C2 can be allotted to Dolores, Colorado, without the imposition of a site restriction, at coordinates 37-28-24 and 108-30-12.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 25, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with regard to the communities listed below, as follows:

City

Channel No.

¹¹The distance between GulfStar's specified site for Channel 245C at Farmington and Dolores is 90.3 kilometers (56 miles) whereas a distance of 105 kilometers (65 miles) is required between Class C and C2 second adjacent channels.

¹²The site restriction is required to avoid a short spacing to the authorization for Station KRYD(FM), Telluride, Colorado, to operate on Channel 285C1 at coordinates 37-55-59 and 107-49-59. In the event Station KRYD(FM)'s application to downgrade its facilities to specify operation on Channel 285C3 at the above-noted coordinates is granted, the site restriction imposed on Channel 287A at Durango in this proceeding may be eliminated.

Dolores, Colorado	227C2
Durango, Colorado	259C2, 263C1 267C1, 287A

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. The window period for filing applications for Channel 227C2 at Dolores, Colorado, and for Channel 287A at Durango, Colorado, will open on August 25, 1997, and close on September 25, 1997.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 227C2 at Dolores, Colorado, and for Channel 287A at Durango, Colorado, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau